

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 8005 – SB 8005

August 12, 2020

SUMMARY OF ORIGINAL BILL: Changes the definition of value as it pertains to certain vandalism offenses.

Creates the offenses of assault against a first responder and aggravated assault against a first responder.

Requires any sentence imposed for rioting include a mandatory minimum 30 day sentence.
Requires any sentence imposed for aggravated rioting include a mandatory minimum 45 day sentence.

Enhances the penalty for the offense of disrupting a meeting or procession and certain obstructing highway or other passageway offenses.

Enhances the penalty for knowingly damaging or defacing real or personal property of the state, or a subdivision thereof, by painting or other permanent application of graffiti.

Enhances the penalty for engaging in camping on property of the state knowing that the area is not specifically designated for use as a camping area to a Class E felony offense with a mandatory 30 day sentence.

Authorizes the Attorney General and Reporter (AG) to conduct an investigation and initiate a criminal prosecution in outlined circumstances if the district attorney general with jurisdiction over outlined violations has indicated an intention not to investigate or prosecute the violation. Authorizes the AG, after providing notice to the District Attorneys General Conference (DAGC), to request the appointment as district attorney general pro tem by an appropriate court. Authorizes the AG to request the assistance of the Tennessee Bureau of Investigation (TBI) to assist in the AG's duties.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$504,200 Incarceration*

Increase Local Expenditures – \$670,800/FY20-21**

\$894,300/FY21-22 and Subsequent Years**

Other Fiscal Impact – Should an appropriate court appoint the Attorney General and Reporter as district attorney general pro tem, expenses related to investigation or

criminal prosecution may be incurred. The timing and extent of such expenses cannot reasonably be determined.

SUMMARY OF AMENDMENT (019271): Deletes all language after the enacting clause.

Changes the definition of value as it pertains to certain vandalism offenses. Expands the definition of damage as it relates to vandalism, and revises the punishment for vandalism in certain instances.

Creates the offenses of assault against a first responder and aggravated assault against a first responder.

Adds state property to places in which a person can commit aggravated criminal trespass. Expands the offense of aggravated criminal trespass. Creates a Class E felony offense of aggravated criminal trespass.

Requires any sentence imposed for rioting include a mandatory minimum 30 day sentence. Requires any sentence imposed for aggravated rioting include a mandatory minimum 45 day sentence.

Enhances the penalty for the offense of disrupting a meeting or procession and certain obstructing highway or other passageway offenses. Creates a Class E felony offense of obstruction in outlined circumstances.

Enhances the penalty for knowingly damaging or defacing real or personal property of the state, or a subdivision thereof, by painting or other permanent application of graffiti.

Requires the court to impose a minimum 50 hours of community service for any sentence imposed for engaging in camping on property of the state knowing that the area is not specifically designated for use as a camping area.

Expands the offense of pointing a laser pointer at a law enforcement officer or emergency personnel.

Authorizes the Tennessee Bureau of Investigation (TBI), in consultation with the appropriate department or agency, to conduct an investigation into a violation of a criminal offense meeting the outlined criteria.

Requires the District Attorneys General Conference (DAGC) to file a report with the Speakers and Chairs of the Judiciary Committees of the House of Representatives and the Senate containing the outlined criteria on or before January 1 each year.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures – Net Impact – \$474,400 Incarceration*

Increase Local Expenditures – \$670,800/FY20-21**

\$894,300/FY21-22 and Subsequent Years**

Assumptions for the bill as amended:

General Assumptions

- The proposed legislation is effective September 15, 2020 and will result in expenditures for approximately 75 percent of FY20-21; therefore, the estimated local impact of this analysis represents 75 percent of FY20-21 and 100 percent of FY21-22 and subsequent years.
- The proposed legislation requires any offender arrested for a violation of unauthorized camping on state property, vandalism of real property, rioting, aggravated rioting, incitement to riot, disrupting a meeting or procession, or obstructing a highway to not be released within 12 hours of the time of arrest unless outlined criteria are met. Any impact to local jails resulting from this mandatory holding period is estimated to be not significant.
- The proposed legislation requires the court to include an order of restitution for multiple offenses. Any impact to state or local government resulting from this restitution requirement is estimated to be not significant.
- Any impact to the court system resulting from the proposed legislation is estimated to be not significant.
- Based on the Fiscal Review Committee's 2008 study and the Administrative Office of the Courts' (AOC) 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. The proposed legislation will not significantly increase state or local revenue.
- Any impact to state or local revenue resulting from the proposed legislation is estimated to be not significant.

Vandalism

- Pursuant to Tenn. Code Ann. § 39-14-408(b)(1), the offense of vandalism in instances where a person knowingly causes damage to or the destruction of any real or personal property of another or of the state, the United States, any county, city, or town knowing that the person does not have the owner's effective consent is punished as theft under Tenn. Code Ann. § 39-14-105, after determining value under Tenn. Code Ann. § 39-11-106.
- Pursuant to Tenn. Code Ann. § 39-11-106(38), value means the fair market value of the property or service at the time and place of the offense or if the fair market value is unavailable, the cost of replacing the property within a reasonable amount of time after the offense.
- The proposed legislation specifies that for such a vandalism offense, the value of the property includes the fair market value of repairing, cleaning, and restoring the property.

- This analysis estimates this change in definition will result in an enhancement of 25 percent of vandalism admissions by one classification.
- Based on information provided by the Department of Correction (DOC), there has been an average of 22.4 Class E vandalism admissions each year over the past five years.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.81 percent per year for each of the past 10 years (from 2008 to 2018), yielding a projected compound population growth rate of 8.37 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for two ($22.4 \times 8.37\%$) additional admissions for a total of 24 ($22 + 2$).
- According to the DOC, 30.4 percent of offenders will re-offend within one year of their release. A recidivism discount of 30.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by the proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($24 \text{ offenders} \times 30.4\% = 7 \text{ offenders}$).
- According to the DOC, the average operating cost per offender per day for calendar year 2020 is \$75.52.
- The average time served for a Class E felony is 1.35 years. The average time served for a Class D felony is 2.26 years. The proposed legislation will result in each admission serving an additional .91 years ($2.26 - 1.35$).
- Pursuant to Tenn. Code Ann. § 9-4-210, 4 offenders [$(24-7) \times 25\%$] will be admitted every year serving an additional 332.38 days ($.91 \times 365.25$). The annualized increase in state incarceration expenditures is estimated to be \$100,405 ($\$75.52 \times 332.38 \times 4$).
- Based on information provided by the DOC, there has been an average of 45.4 Class D vandalism admissions each year over the past five years.
- Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for four ($45.4 \times 8.37\%$) additional admissions for a total of 49 ($45.4 + 4$).
- According to the DOC, 40.4 percent of offenders will re-offend within two years of their release. A recidivism discount of 40.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by the proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($49 \text{ offenders} \times 40.4\% = 20 \text{ offenders}$).
- The average time served for a Class D felony is 2.26 years. The average time served for a Class C felony is 3.50 years. The proposed legislation will result in each admission serving an additional 1.24 years ($3.50 - 2.26$).
- Pursuant to Tenn. Code Ann. § 9-4-210, 7 offenders [$(49 - 20) \times 25\%$] will be admitted every year serving an additional 452.91 days (1.24×365.25). The annualized increase in state incarceration expenditures is estimated to be \$239,426 ($\$75.52 \times 452.91 \times 7$).
- Based on information provided by the DOC, there has been an average of 15.4 Class C vandalism admissions each year over the past five years.

- Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for one (15.4 x 8.37%) additional admission for a total of 16 (15.4 + 1).
- According to the DOC, 46.4 percent of offenders will re-offend within three years of their release. A recidivism discount of 46.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by the proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (16 offenders x 46.4% = 7 offenders).
- The average time served for a Class C felony is 3.50 years. The average time served for a Class B felony is 6.48 years. The legislation will result in each admission serving an additional 2.98 years (6.48 – 3.50).
- Pursuant to Tenn. Code Ann. § 9-4-210, 2 offenders [(16 - 7) x 25%] will be admitted every year serving an additional 1,088.45 days (2.98 x 365.25). The annualized increase in state incarceration expenditures is estimated to be \$164,399 (\$75.52 x 1,088.45 x 2).
- Based on information provided by the DOC, there has been an average of 2.8 Class B vandalism admissions each year over the past five years.
- Due to the low number of admissions, any impact to Class B vandalism admissions resulting from the proposed legislation is estimated to be not significant.
- The total impact to state incarceration resulting from changing the valuation of property as it relates to the offense of vandalism is estimated to be \$504,230 (\$100,405 + \$239,426 + \$164,399).

Vandalism Damage

- The proposed legislation adds intentionally marring, marking upon, or defacing, in a temporary or permanent manner, state or local government property or any entrance or curtilage to or fixture on the property, with the exception of temporary marking of sidewalks to the definition of damage as it relates to the offense of vandalism.
- The proposed legislation specifies that a first violation of such offense on property valued less than \$2,500 that is not state or local government property designated as a historic landmark or listed on the National Register of Historic Places is a Class A misdemeanor.
- Based on information provided by the DOC, there has been an average of 22.4 Class E vandalism admissions each year over the past five years.
- This analysis assumes such violations are changed as a Class E felony under current law, and the proposed legislation will result in a 5 percent reduction in Class E vandalism admissions.
- According to the DOC, the average operating cost per offender per day for calendar year 2020 is \$75.52.
- The average time served for a Class E felony is 1.35 years.
- Pursuant to Tenn. Code Ann. § 9-4-210, 1 less offender (22.4 x 5%) will be admitted every year and will no longer serve 493.09 days (1.35 x 365.25). The annualized decrease in state incarceration expenditures is estimated to be \$37,238 (\$75.52 x 493.09 x 1).

- This analysis assumes individuals convicted of misdemeanor vandalism offenses resulting from the proposed legislation would be convicted of an alternate Class A misdemeanor offense under current law.
- There will not be a sufficient number of Class A misdemeanor prosecutions for state or local government to experience any significant increase in revenue or expenditures.

Assault Against a First Responder

- Pursuant to Tenn. Code Ann. § 39-13-101(b)(1)(A), assault by intentionally, knowingly, or recklessly causing bodily injury to another is a Class A misdemeanor offense, punishable by incarceration and a fine not to exceed \$15,000.
- Pursuant to Tenn. Code Ann. § 39-13-101(b)(1)(C), assault by intentionally or knowingly causing physical contact with another and a reasonable person would regard the contact as extremely offense or provocative is a Class B misdemeanor offense.
- The proposed legislation creates a Class A misdemeanor offense of assault against a first responder when a person knowingly causes bodily injury to a first responder discharging or attempting to discharge official duties or knowingly causes physical contact with a first responder discharging or attempting to discharge official duties and a reasonable person would regard the contact as extremely offensive or provocative.
- The proposed legislation requires a minimum 30 day incarceration sentence for assault against a first responder offenses and a mandatory \$5,000 fine.
- This analysis assumes individuals convicted of a Class A misdemeanor offense assault by knowingly causing bodily injury to a first responder are spending an average of 15 days in local jail.
- The average cost to local governments to house an inmate in a local jail facility is \$64 per day.
- Based on data obtained through the Tennessee Bureau of Investigation (TBI) Tennessee Incident Based Reporting System (TIBRS), in 2018 there were 397 arrests for simple assault against law enforcement officer or government employee that resulted in an injury.
- This analysis assumes 48.6 percent, or 193 (397 x 48.6%), of arrests resulted in Class A misdemeanor convictions.
- The proposed legislation will result in an increase in local incarceration expenditures estimated to be \$138,960 {[\$64 x 193 offenders x (30-15) days] x 75%} in FY20-21 and \$185,280 [\$64 x 193 offenders x (30-15) days] in FY21-22 and subsequent years.
- This analysis assumes individuals convicted of a Class B misdemeanor offense of assault by knowingly causing physical contact with a first responder discharging or attempting to discharge official duties and a reasonable person would regard the contact as extremely offensive or provocative are spending an average of one day in local jail.
- Based on data obtained through the TBI TIBRS, in 2018 there were 783 arrests for simple assault against law enforcement officer or government employee that resulted in no injury.
- This analysis assumes 48.6 percent, or 381 (783 x 48.6%), of arrests resulted in Class B misdemeanor convictions.
- The proposed legislation will result in an increase in local incarceration expenditures estimated to be \$530,352 {[\$64 x 381 offenders x (30-1) days] x 75%} in FY20-21 and \$707,136 [\$64 x 381 offenders x (30-1) days] in FY21-22 and subsequent years.

Aggravated Assault Against a First Responder

- The proposed legislation creates a Class C felony offense of aggravated assault against a first responder when a person knowingly commits an assault, as defined by the legislation, against a first responder discharging or attempting to discharge official duties and the assault:
 - Results in serious bodily injury to the first responder;
 - Results in the death of the first responder;
 - Involved the use or display of a deadly weapon; or
 - Involved strangulation or attempted strangulation.
- The proposed legislation requires a minimum 90 day incarceration sentence for aggravated assault against a first responder offenses and a mandatory \$15,000 fine.
- Pursuant to Tenn. Code Ann. § 39-13-102(e)(1)(A), a person that committed such an offense could be charged with a Class C felony offense of aggravated assault under current law.
- Based on information provided by DOC, the average time served for a Class C felony is 3.5 years
- Therefore, any impact resulting from creating a Class C felony offense of aggravated assault against a first responder with a 90 day minimum incarceration sentence is estimated to be not significant.

Rioting

- Based on information provided by the AOC, there has been an average of 0.2 Class A misdemeanor convictions of rioting each year over the past five years. This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there are a total of two convictions ($0.2 / 10\% = 2$) per year for misdemeanor violations of Tenn. Code Ann. § 39-17-302.
- This analysis assumes individuals convicted of a Class A misdemeanor for rioting are spending an average of 15 days in local jail.
- The average cost to local governments to house an inmate in a local jail facility is \$64 per day.
- Mandating a minimum 30 days of confinement will result in an additional 15 (30 - 15) days confinement for rioting and will lead to a mandatory increase in local expenditures estimated to be \$1,440 [(2 admissions x 15 days x \$64) x 75%] in FY20-21 and a recurring mandatory increase in local expenditures estimated to be \$1,920 (2 admissions x 15 days x \$64) in FY21-22 and subsequent fiscal years.

Aggravated Rioting

- Pursuant to Tenn. Code Ann. §39-17-303(b), aggravated rioting is a Class E felony offense under current law.
- Based on information provided by DOC, the average time served for a Class E felony offense is 1.35 years; therefore, any impact resulting from requiring a 45 day minimum sentence for aggravated rioting is estimated to be not significant.

Disrupting a Meeting or Procession and Obstructing Highway or Other Passageway

- Pursuant to Tenn. Code Ann. § 39-17-307(c)(1), it is a Class C misdemeanor offense to obstruct a highway or other passageway.
- Pursuant to Tenn. Code Ann. § 39-17-306, a person commits a Class B misdemeanor offense if, with the intent to prevent or disrupt a lawful meeting procession, or gathering, the person substantially obstructs or interferes with the meeting, procession, or gathering by physical action or verbal utterance.
- The proposed legislation enhances these offenses to a Class A misdemeanor offenses in outlined instances.
- There will not be a sufficient number of prosecutions for state or local government to experience any significant increase in revenue or expenditures.
- The proposed legislation creates a Class E felony offense of obstructing highway or other passageway if such obstruction prevents an emergency vehicle from accessing a highway or street, a first responder from responding to an injury, or prevents access to an emergency exit. The proposed legislation will result in the one admission every five years.
- Population growth and recidivism will not impact these admissions.
- Pursuant to Tenn. Code Ann. § 9-4-210, one offender will be admitted five every years serving 493.09 days (1.35×365.25). The annualized increase in state incarceration expenditures is estimated to be \$7,448 ($\$75.52 \times 493.09 / 5$).

Graffiti

- Pursuant to Tenn. Code Ann. § 39-14-412, tampering with a mailbox or placing graffiti on a state or local government building is a Class B misdemeanor offense punishable by at least 25 hours of public or community service work.
- Based on information provided by the AOC, there has been an average of 0.8 Class B misdemeanor convictions of Tenn. Code Ann. § 39-14-412 each year over the past five years. This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there are a total of eight convictions ($0.8 / 10\% = 8$) per year for misdemeanor violations of Tenn. Code Ann. § 39-14-412.
- There will not be a sufficient number of Class A misdemeanor prosecutions for state or local government to experience any significant increase in revenue or expenditures.
- There will not be a significant impact on the number of cases in the court system for state or local government to experience any significant impact on revenue or expenditures.

Camping

- Based on information provided by the AOC, there have been zero convictions under Tenn. Code Ann. § 39-14-414 over the past five years.
- Any impact resulting from requiring 50 hours of community service for violations of Tenn. Code Ann. § 39-14-414 is estimated to be not significant.

Aggravated Criminal Trespass

- The proposed legislation expands the offense of aggravated criminal trespass to include a person who enters or remains on property when the person knows the person does not

have the property owner's effective consent to do so and the person, while on the property, recklessly damages the property or personal property thereon.

- The proposed legislation creates a Class E felony offense of aggravated criminal trespass when:
 - On residential property belonging to or occupied by a law enforcement officer, active duty member of the military, judge, or elected or appointed federal, state or local official; and
 - With intent to harass a person described in subdivision (c)(3)(A) due to the person's status as a law enforcement officer, active duty member of the military, judge, or elected or appointed federal, state, or local official.
- Any impact to local incarceration resulting from the expansion of the offense of aggravated criminal trespass is estimated to be not significant.
- There will not be a sufficient number of Class B misdemeanor prosecutions for state or local government to experience any significant increase in revenue or expenditures.
- This analysis assumes individuals committing such the Class E felony offense of aggravated criminal trespass are convicted of alternate Class E felony offenses under current law; therefore, any impact to state incarceration expenditures resulting from the creation of the offense is estimated to be not significant.

Pointing laser pointer at law enforcement officer or emergency personnel

- The proposed legislation expands the Class A misdemeanor offense to knowingly shine or aim a light, laser, horn or other mechanism toward the head of a law enforcement officer, firefighter, or emergency medical technician, or other emergency service personnel while the individual is in the performance of the individual's official duties with intent to cause bodily harm.
- The proposed legislation includes a mandatory \$5,000 fine and a mandatory minimum sentence of 30 days of incarceration for such offenses.
- There will not be a sufficient change in the number of Class A misdemeanor prosecutions for state or local government to experience any significant increase in revenue or expenditures.
- There will not be a significant impact on the number of cases in the court system for state or local government to experience any significant impact on revenue or expenditures.

DAGC

- The proposed legislation requires the DAGC to submit a report to the outlined parties including:
 - The aggregate number of reports of potential violations of the outlined criminal offenses;
 - The action taken by the appropriate district attorney for each report; and
 - The legal disposition of any case resulting from each report.
- Any impact to the DAGC to compile and file such a report will not result in a significant increase in expenditures and can be accommodated within existing resources.

TBI

- The proposed legislation authorizes the TBI, in consultation with the appropriate department or agency, to conduct an investigation into a violation of a criminal offense:
 - In which the victim of the offense is a state employee or contractor who was acting in the employee or contractor's official capacity at the time of the offense;
 - That resulted in state property being damaged or destroyed as a result of the offense; or
 - That delayed the administration of state government at a significant cost to the state.
- Any impact to the TBI to conduct such investigations will not result in a significant increase in expenditures and can be accommodated within existing resources.

Total State Impact

- The total annualized net impact to state incarceration resulting from the proposed legislation is estimated to be \$474,440 (\$504,230 - \$37,238 + \$7,448).

Total Local Impact

- The total mandatory increase in local expenditures in FY20-21 is estimated to be \$670,752 (\$530,352 + \$138,960 + \$1,440).
- The total mandatory increase in local expenditures in FY21-22 and subsequent years is estimated to be \$894,336 (\$707,136 + \$185,280 + \$1,920).

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

***Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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